

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

ROBERT WINENGER,

Plaintiff,

V.

APRIL MARTIN LOWRY,

Defendant.

**Civil Action No.
2:22-cv-135-SCJ**

AMENDED COMPLAINT

Robert Winenger hereby files this amended complaint against April Martin Lowry, as follows.

NATURE OF THE ACTION

1. This is an action for unlawful and unauthorized inspection of tax return information pursuant to 26 U.S.C. § 7431(a)(2) and for the torts of fraud and conversion relating thereto.

PARTIES

2. Robert Winenger is an individual resident of the State of Georgia. Mr. Winenger is subject to the jurisdiction of this Court and may be served by serving the undersigned.

3. April Martin Lowry is an individual resident of the State of Georgia, and may be served at her residence at 4939 Rilla Road, Gainesville, Hall County, Georgia 30506.

JURISDICTION AND VENUE

4. Jurisdiction in this action is proper in this Court pursuant to 28 U.S.C. § 1331 as this matter involves claims under Federal Law, specifically with regard to 26 U.S.C. § 7431(a)(2) for unlawful and unauthorized inspection of tax return information by a person who is not an employee of the United States.

5. Venue in this action is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because all, or substantially all, of the acts or omissions giving rise to the claims asserted herein occurred in this District.

FACTUAL BACKGROUND

6. Ms. Lowry used to be married to Mr. Winenger.

7. Ms. Lowry is not an employee of the United States

8. During their marriage, Mr. Winenger made regular Federal tax deposits with the Internal Revenue Service (hereafter, the “IRS”).

9. Ms. Lowry was aware of this.

10. Ms. Lowry was also aware of Mr. Winenger’s full identification profile (including his social security number, date of birth, and full name).

11. On or about April 20, 2013, Mr. Winenger made an estimated tax payment with the IRS in the amount of \$18,000.00.

12. On or about June 7, 2013, Mr. Winenger made an estimated tax payment with the IRS in the amount of \$18,000.00.

13. On or about September 16, 2013, Mr. Winenger made an estimated tax payment with the IRS in the amount of \$18,000.00.

14. These payments totalled \$54,000.00.

15. Each of these payments was made to Mr. Winenger's IRS account for his social security number.

16. At some later date, Ms. Lowry contacted the IRS to seek information regarding Mr. Winenger's tax deposits.

17. Ms. Lowry called the IRS on numerous occasions and failed to acquire Mr. Winenger's tax return information, specifically the information regarding his tax deposits, as she was not authorized to do so.

18. On or about September 11, 2014, Ms. Lowry created a fraudulent Form 2848 Power of Attorney (hereafter, the "Form 2848") and forged Mr. Winenger's signature to the Form 2848.

19. Using the forged Form 2848, Ms. Lowry contacted the IRS and unlawfully and without authorization inspected Mr. Winenger's tax return information over the phone.

20. On the same phone call, Ms. Lowry went on to convince the IRS Agent handling the call to transfer the \$54,000.00 of tax deposits from Mr. Winenger's account to Ms. Lowry's account.

21. Mr. Winenger did not authorize this transfer of the \$54,000.00 of tax deposits.

22. Mr. Winenger spoke to the IRS before filing his Verified Complaint in 2022 and learned of Ms. Lowry's forged Form 2848.

23. Mr. Winenger had not been aware of the Form 2848 until 2022.

24. Forms 2848 are used by tax professionals and are not typically used by non-tax professionals.

25. Mr. Winenger is not a tax professional.

26. Mr. Winenger did not discover these forgeries until 2022.

27. Mr. Winenger now sues for damages.

COUNT I
Unauthorized Inspection of Tax Return Information
26 U.S.C. § 7431(a)(2)

28. Mr. Winenger restates paragraphs 1-27 and incorporates said paragraphs herein by reference.

29. On or about September 11, 2014, after numerous failed attempts, Ms. Lowry created a fraudulent Form 2848 and used the same to access and inspect Mr. Winenger's tax return information over the phone with an IRS Agent.

30. Ms. Lowry did this without authorization from Mr. Winenger.

31. Ms. Lowry is liable to Mr. Winenger for violation of 26 U.S.C. § 7431(a)(2).

COUNT II
Fraud

32. Mr. Winenger restates paragraphs 1-31 and incorporates said paragraphs herein by reference.

33. On or about September 11, 2014, after numerous failed attempts, Ms. Lowry created a fraudulent Form 2848 and used the same to access and inspect Mr. Winenger's tax return information over the phone with an IRS Agent.

34. Ms. Lowry used this information, and the forged Form 2848, to convince the IRS Agent to transfer \$54,000.00 of Mr. Winenger's tax deposits to Ms. Lowry's own accounts.

35. Ms. Lowry deceived the IRS Agent in doing this.

36. Ms. Lowry did this without authorization from Mr. Winenger.

37. Mr. Lowry is liable to Mr. Winenger for fraud.

COUNT III
Conversion

38. Mr. Winenger restates paragraphs 1-37 and incorporates said paragraphs herein by reference.

39. On or about September 11, 2014, after numerous failed attempts, Ms. Lowry created a fraudulent Form 2848 and used the same to access and inspect Mr. Winenger's tax return information over the phone with an IRS Agent.

40. Ms. Lowry used this information, and the forged Form 2848, to convince the IRS Agent to transfer \$54,000.00 of Mr. Winenger's tax deposits to Ms. Lowry's own accounts.

41. Ms. Lowry deceived the IRS Agent in doing this.

42. Ms. Lowry did this without authorization from Mr. Winenger.

43. Mr. Winenger has made numerous requests for Ms. Lowry to return the converted \$54,000.00, but Ms. Lowry has refused.

44. Mr. Lowry is liable to Mr. Winenger for conversion.

COUNT IV
Identity Theft

45. Mr. Winenger restates paragraphs 1-44 and incorporates said paragraphs herein by reference.

46. On or about September 11, 2014, after numerous failed attempts, Ms. Lowry created a fraudulent Form 2848 and used the same to access and inspect Mr. Winenger's tax return information over the phone with an IRS Agent.

47. Ms. Lowry used this information, and the forged Form 2848, to convince the IRS Agent to transfer \$54,000.00 of Mr. Winenger's tax deposits to Ms. Lowry's own accounts.

48. Ms. Lowry deceived the IRS Agent in doing this.

49. Ms. Lowry deceived the IRS Agent into believing that she had acted with Mr. Winenger's consent pursuant to the forged Form 2848.

50. Mr. Lowry is liable to Mr. Winenger for identity theft.

PRAYER FOR RELIEF

WHEREFORE, Mr. Winenger prays for judgment as requested above against Ms. Lowry and further requests:

- a. An award of damages as stated per this Complaint;
- b. Incidental and consequential damages;
- c. Punitive damages;
- d. Preliminary interlocutory injunctive relief;
- e. An award of attorneys' fees and costs in bringing and maintaining this action; and
- f. Any other relief as this Court may deem just and reasonable.

DEMAND FOR JURY TRIAL

Mr. Winenger requests a trial by jury on all issues so triable.

Respectfully submitted, this 15th day of September, 2022.

FGP LAW, LLC

/s/ Frank G. Podesta

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Attorneys for Robert Winenger

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2022, I served all counsel of record with the foregoing **Amended Complaint** via the Court's CM/ECF electronic filing system.

This 15th day of September, 2022.

/s/ Frank G. Podesta

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